

DOCKET NO.: 268435US26PCT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Mario POLEGATO MORETTI

PATENT NO.: 7,367,141

GROUP: 3728

ISSUED: May 6, 2008

EXAMINER: KAVANAUGH, J.

FOR: WATERPROOF AND BREATHABLE SOLE FOR SHOES, AND SHOE
MANUFACTURED WITH SUCH SOLE

REQUEST FOR CERTIFICATE OF CORRECTION

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
ALEXANDRIA, VA 22313-1450

SIR:

The following is a Request for Certificate of Correction in Serial Number 10/529,187, now U.S. Patent Number 7,367,141.

In accordance with the provisions of Rule 322 of the Rules of Practice, which implement 35 USC 255, the U.S. Patent and Trademark Office is respectfully requested to issue a Certificate of Correction in the above-identified patent.

This Certificate of Correction corrects a minor mistake in independent Claims 1, 16 and 32, which is self-evident on its face when reviewing the prosecution history of U.S. Patent No. 7,367,141 ('141 patent). Applicant submits that the specific correction is unambiguous and the corrected mistake does not materially affect the scope or meaning of the patent.

The correction of a ministerial error in the claims is allowable if it "clearly evident from the specifications, drawings, and prosecution history how the error should appropriately be corrected" to one of skill in the art. *Superior Fireplace Co. v. Majestic Prods. Co.*, 270 F.3d 1358, 1373 (Fed. Cir. 2001). During prosecution of the '141 patent, the Examiner called Applicant to suggest claim amendments to place the application in condition for allowance. Applicant agreed to an Examiner's Amendment that would change the recitation of "macroportion is made of net, felt or other diffusely perforated material" to --macroportion is made of a perforated mesh material-- in each of the independent claims. However, only the first instance of this phrase was changed in the Examiner's Amendment contained on page 2 of the December 31, 2007 Notice of Allowance. Subsequent instances of the phrase "macroportion is made of net, felt or other diffusely perforated material" in each independent claim were not similarly changed. It is clear from the Examiner initiated discussion that the purpose of the Examiner's Amendment was to clarify this limitation and therefore, this limitation should have been clarified for each instance within the claims.

Applicant submits that the prosecution history supports the argument that it is unambiguous how the remaining references to "macroportion is made of net, felt or other diffusely perforated material" should be changed. That is, one of skill in the art would know

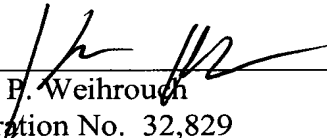
from the prosecution history that due to a miscommunication between the Examiner and Applicant, the subsequent phrases were missed from being similarly changed and one of skill in the art would know that the proper correction would be to change those phrases as well.

For at least the above reasons, Applicant submits that the mistake was at least one of a clerical nature; a typographical nature; and a mistake of minor character, and a correction of the mistake would not involve changes which would constitute new matter or require further examination. Further, the changes being proffered in this matter are consistent with the changes that the Federal Circuit permitted as proper in its *Superior Fireplace* decision. Accordingly, Applicant respectfully requests that the Certificate of Correction be approved.

In light of the fact that the errors were the fault of our office, the required fee of \$100 is enclosed. The requested corrections are listed on FORM P.T.O. 1050.

Respectfully submitted,

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,367,141
DATED: May 6, 2008
INVENTOR(S): Mario POLEGATO MORETTI

It is certified that an error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 5, lines 43-44, delete “made of net, felt or other diffusely perforated material”

Column 5, lines 49-50, delete “made of net, felt or other diffusely perforated material”

Column 5, lines 56-57, delete “made of net, felt or other diffusely perforated material”

Column 6, lines 53-54, delete “made of net, felt or other diffusely perforated material”

Column 6, lines 59-60, delete “made of mesh, felt or other diffusely perforated material”

Column 7, lines 64-65, delete “made of net, felt or other diffusely perforated material”

Column 8, lines 2-3, delete “made of net, felt or other diffusely perforated material”

Mailing address of sender:

Patent No. 7,367,141

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